

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

JUNE 17 2009

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2009-0051-PR
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
JIMMY LEON ALEXANDER,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20041444

Honorable Kenneth Lee, Judge

REVIEW GRANTED; RELIEF DENIED

Jimmy Leon Alexander

Florence
In Propria Persona

B R A M M E R, Judge.

¶1 After a jury trial, Jimmy Leon Alexander was convicted of kidnapping, sexual assault, four counts of aggravated assault, possession of a deadly weapon by a prohibited possessor, possession of a dangerous drug, and possession of drug paraphernalia. The trial court sentenced him to presumptive terms, some concurrent and some consecutive, for a total

of fifteen years' imprisonment. We affirmed his convictions and sentences on appeal. *State v. Alexander*, No. 2 CA-CR 2005-0414 (memorandum decision filed Nov. 1, 2007).

¶2 In this pro se petition for review, Alexander challenges the trial court's denial of the petition for post-conviction relief he filed pursuant to Rule 32, Ariz. R. Crim. P., asserting ineffective assistance of trial counsel. We will not disturb a trial court's denial of post-conviction relief unless the court has abused its discretion. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). Alexander has demonstrated no such abuse here. He argues his trial counsel was ineffective in developing a defense to sexual assault because counsel failed to retain a medical expert to testify that the victim's lack of injury was inconsistent with the sexual assault he described to the jury.¹ But, as the court below stated, Alexander presented no evidence that any expert would testify as he supposes and thus failed to establish either that his attorney's presentation of his defense fell below reasonable professional standards or that he was prejudiced by the omission of expert testimony. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985) (ineffective assistance of counsel claim requires dual showing that counsel's performance objectively unreasonable under prevailing professional standards and deficient performance prejudiced defense). With respect to Alexander's failure to establish prejudice, the court concluded he had failed to establish a reasonable probability the expert testimony he envisions could have changed the outcome of the trial. *See Nash*, 143 Ariz. at

¹Alexander's sexual assault conviction was based on the victim's testimony that Alexander had sodomized him with the barrel of a gun.

398, 694 P.2d at 228. The court noted the victim’s testimony, sufficient in itself to establish Alexander’s guilt, was further corroborated by physical evidence found through forensic examination of Alexander’s gun.

¶3 Alexander also states in his petition for review “his intention to consolidate his issues from his Direct Appeal[] into this Post Conviction Petition,” and he raises three additional issues that we addressed on the merits in his direct appeal. These additional claims are now precluded. Ariz. R. Crim. P. 32.2(a)(2). Moreover, we do not consider issues that have been neither presented to nor ruled on by the trial court and are raised for the first time in a petition for review. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (petitioner may not present new issues on review).

¶4 The trial court in its minute entry clearly identified, adequately analyzed, and correctly ruled on the ineffective assistance of counsel claim Alexander raised below, and we approve and adopt the court’s analysis. *See generally State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Although we grant the petition for review, we find no abuse of the trial court’s discretion and therefore deny relief.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge